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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,442	10/29/2001	Thomas Ward Osborn III	7310C	6100

27752 7590 03/19/2004

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/19/2004

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/039,442

Applicant(s)

OSBORN ET AL.

Examiner

Jacqueline F Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/4/04 has been entered.

Response to Arguments

2. The present application claims a head portion with a width ranging from 1.5 to 8 cm and a trailing portion ranging in width from about 1cm to 3cm. Applicant argues the head portion of the tampon is larger than the trailing portion. Applicant further argues Bailey does not teach or suggest a catamenial tampon comprising a withdrawal string wherein the withdrawal string is attached to the wider head portion of the tampon. However, the claimed width of the head and trailing portions overlap. Therefore, it is possible for the head and trailing portion to have the same width, for instance a width of 2cm each, and still be within the claimed ranges.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey USPN 2330257.

As to claim 1, Bailey discloses a catamenial tampon comprising: a bag-like conformable absorbent body 2. The tampon of Bailey is bag-like in that it is conformable and has an open end and a closed end (Figure 4). The tampon of Bailey has an outer surface, an inner surface, a head portion, a trailing portion, and withdrawal

string 6 (Figure 4). The inner surface of the tampon defines an interior the tampon wherein the head portion is closed (Figure 4).

Bailey does not disclose the dimensions of the head and trailing portions. However, the claimed width of the head and trailing portions overlap. Therefore, it is possible for the head and trailing portion to have the same width, for instance a width of 2cm each, and still be within the claimed ranges. From the figures, it can be seen that Bailey discloses the head portion is slightly smaller than the trailing portion, which is within the scope of claim. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the tampon of Bailey with a trailing portion and head portion in the claimed ranges. The reason for this is that applicant is claiming a size for the tampon that is more or less dictated by the fact that it must be of a size to fit into the vagina, the same as the tampon of Bailey. It has been routinely held that mere changes in dimensions, with no criticality for the claimed dimensions, is insufficient to define over the applied prior art. See MPEP 2144.04(IV)A.

Bailey does not disclose the tampon has a shape modulus of compression of less than 0.05 pounds of force. Tampons characteristic of the way they are used must be flexible and conformable to the body cavity for the comfort of the user. With a one layer cotton tampon as disclosed by Bailey and knowing that cotton is a readily conformable and flexible material, the examiner feel there is enough basis to conclude the limitation of shape modulus of compression is obvious. It is well known to one of ordinary skill in the art, and therefore obvious, that a collapsible tampon has a shape

modulus of compression of less than 0.05 pounds of force. For example, Duncan USPN 3749094 explicitly teaches a shape modulus of compression of greater than 0.05 pounds force is desired to achieve a tampon that is not collapsible (Duncan col. 8, lines 58-68). Therefore, Duncan implicitly teaches a shape modulus of compression of less than 0.05 pounds force is desired to achieve a tampon that is collapsible. Duncan discloses the withdrawal string is attached to the head portion of the absorbent body (page 2, col. 1, lines 30-31).

As to claim 4, Bailey discloses at least a portion of the withdrawal string is disposed within the interior of the tampon (Figure 7).

As to claim 6, Bailey discloses the tampon comprises an absorbent cotton material (page 2, col. 1, lines 19-24).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lilaonitkul et al. is cited to show a tampon with a pledget with an inverted conical shape.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703)305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Examiner
Art Unit 3761



March 16, 2004